

803 KAR 2:070. Inspection; procedure.

RELATES TO: KRS 338.101

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY, FUNCTION, AND CONFORMITY: Pursuant to the authority granted the Commissioner of the Department of Workplace Standards by KRS 338.121, the following rules and administrative regulations are adopted, governing the authority to conduct inspections. The function of the administrative regulation is to identify this authority for conducting occupational safety and health inspections and the procedure to be followed by the compliance officers during the conduct of the inspections.

Section 1. Authority for Inspections. (1) Compliance Safety and Health Officers of the Division of Occupational Safety and Health Compliance are authorized to enter without delay and at reasonable times any factory, plant, establishment, construction site, or other area, workplace or environment where work is performed by an employee of an employer; to inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, any such place of employment, and all pertinent conditions, structures, machines, apparatus, devices, equipment and materials therein; to question privately any employer, owner, operator, agent or employee; and to review records required by KRS Chapter 338 and administrative regulations issued pursuant thereto, and other records which are directly related to the purpose of the inspection.

(2) Prior to inspecting areas containing information which is classified by an agency of the United States Government, in the interest of national security, compliance safety and health officers shall have obtained the appropriate security clearance.

Section 2. Objection to Inspection. Upon a refusal to permit a compliance safety and health officer, in the exercise of his official duties, to enter without delay and at reasonable times any place of employment or any place therein, to inspect, to review records, or to question any employer, owner, operator, agent, or employee, in accordance with this administrative regulation, or to permit a representative of employees to accompany the compliance safety and health officer during the physical inspection of any workplace in accordance with 803 KAR 2:110, the compliance safety and health officer shall terminate the inspection or confine the inspection to other areas, conditions, structures, machines, apparatus, devices, equipment, materials, records, or interviews concerning which no objection is raised. The compliance safety and health officer shall endeavor to ascertain the reason for such refusal, and he shall immediately report the refusal and the reason therefore to the Commissioner of the Department of Workplace Standards. The commissioner shall promptly take appropriate action including compulsory process, if necessary.

Section 3. Entry not a Waiver. Any permission to enter, inspect, review records, or question any person, shall not imply or be conditioned upon a waiver of any cause of action, citation, or penalty under KRS Chapter 338. Compliance safety and health officers are not authorized to grant any such waiver.

Section 4. Conduct of Inspections. (1) Subject to the provisions herein, inspections shall take place at such times and in such places of employment as the Commissioner of the Department of Workplace Standards or the compliance safety and health officer may direct. At the beginning of an inspection, compliance safety and health officers shall present their credentials to the owner, operator, or agent in charge at the establishment; explain the nature and purpose of the inspection; and indicate generally the scope of the inspection and the records specified herein which

they wish to review. However, such designation of records shall not preclude access to additional records specified herein.

(2) Compliance safety and health officers shall have authority to take environmental samples and to take or obtain photographs related to the purpose of the inspection, employ other reasonable investigative techniques, and question privately any employer, owner, operator, agent or employee of an establishment. As used herein, the term "employ other reasonable investigative techniques" includes, but is not limited to, the use of devices to measure employee exposures and the attachment of personal sampling equipment such as dosimeters, pumps, badges, and other similar devices to employees in order to monitor their exposures.

(3) In taking photographs and samples, compliance safety and health officers shall take reasonable precautions to ensure that such actions with flash, spark-producing, or other equipment would not be hazardous. Compliance safety and health officers shall comply with all employer safety and health rules and practices at the establishment being inspected, and they shall wear and use appropriate protective clothing and equipment.

(4) The conduct of inspection shall be such as to preclude unreasonable disruption of the operations of the employer's establishment.

(5) At the conclusion of an inspection, the compliance safety and health officer shall confer with the employer or his representative and informally advise him of any apparent safety and health violations disclosed by the inspection. During such conference, the employer shall be afforded an opportunity to bring to the attention of the compliance safety and health officer any pertinent information regarding conditions in the workplace.

(6) Inspection shall be conducted in accordance with the requirements of this section. (6 Ky.R. 210; eff. 11-7-79; Am. 8 Ky.R. 1449; eff. 7-7-82; 10 Ky.R. 308; eff. 9-7-83; 652; eff. 12-2-83; TAm eff. 8-9-2007; TAm eff. 9-8-2011.)